

~~331 CMR: BUREAU OF MILK MARKETING~~

~~331 CMR 8.00: PRICES AND RULES FOR MILK DEALERS~~

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Each milk dealer who in any market affected pursuant to 331 CMR 8.02 purchases or receives milk from producers or other milk dealers, shall account and pay for such milk at the prices and subject to the terms, conditions and regulations set forth in 331 CMR 8.00.

8.01: Definitions

~~(1) Terms.~~ As used in 331 CMR 8.00 the following terms shall, except where the context otherwise requires, have the following meanings:

~~Act~~ means the Massachusetts Milk Control Law, M.G.L. c. 94A.

~~Available~~ as used in 331 CMR 8.08(5)(h) means available either in the milk dealer's own operations conducted at or from the milk plant at which the milk in question was received from producers; or through purchase by another milk dealer, or offer of another milk dealer to purchase such milk at not less than the applicable Class I producer price for milk sold, distributed, used or disposed of in the market or area in which such other milk dealer's milk plant is located, f.o.b. platform of the selling milk dealer's milk plant at which such milk was received from producers, cash on delivery.

~~Base~~, for each producer, including each milk dealer who is also a producer, means that figure determined pursuant to the provisions of 331 CMR 7.03.

~~Base Milk~~ means milk delivered by a producer to a milk dealer within and not in excess of such producer's base.

~~Board~~ means the Milk Control Board qualified pursuant to M.G.L. c. 20, § 7.

~~Commission~~, the Milk Control Commission established under M.G.L. c. 20, § 7.

~~Bulk~~, as used with respect to the purchase, receipt, sale, delivery, shipment or transfer of milk (as defined in M.G.L. c. 94A, § 1), means in tanks, tank cars, tank trucks, jugs, cans or other containers which when filled hold not less than eight quarts each.

~~Concentrated milk~~ means unsweetened condensed or concentrated milk except when contained in hermetically sealed cans. With respect to concentrated milk any reference to quantity shall be construed to mean its whole milk equivalent.

~~Cream~~ means cream which contains not less than 16% butterfat.

~~Delivery period~~ means the current marketing period from the first to and including the last day of each month.

~~Director~~ means the Director of Milk Control, appointed and qualified pursuant to M.G.L. c. 20, § 8, inserted therein by M.G.L. c. 691, § 1, and as from time to time hereafter amended.

~~Excess milk~~ means milk delivered by a producer to a milk dealer in excess of such producer's base as determined pursuant to 331 CMR 7.03.

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Grade as applied to milk, means a grade established by the "Rules and Regulations Establishing Grades of Milk, Regulating and Establishing Standards in accordance with the Provisions of the M.G.L. c. 94A, § 13, as amended by M.G.L. c. 263, adopted by the Milk Regulation Board, approved in Council, May 8, 1935, and filed with the State Secretary, and as from time to time amended pursuant to provisions of said M.G.L. c. 94A, § 13.

Intermediate milk dealer means a milk dealer who distributes no milk of his own production, who purchases or receives no milk from producers, and who purchases or receives from other milk dealers no milk which has not been bottled or otherwise packaged for sale by another milk dealer.

Market means one or more cities or towns, or any portion thereof, designated by the Commission as a natural milk marketing area within the Commonwealth.

Milk means milk (natural, skimmed or fortified with additional butterfat content, raw, pasteurized or otherwise processed, cultured or modified) having a butterfat content of less than 16% and more than $\frac{1}{2}$ of 1%.

Milk beverage means a beverage consisting of milk or skimmed milk, to which has been added a sirup or flavor consisting of wholesome ingredients.

Milk dealer means any person who within or outside the Commonwealth engages in the business of a milk dealer as defined in M.G.L. c. 94A, § 1.

Milk plant means any establishment regularly employed by a milk dealer for pasteurizing, bottling (or otherwise packaging for sale), or otherwise processing or handling milk; or, if the milk dealer operates or employs no such milk plant within the Commonwealth, it means any place within the Commonwealth at which the milk dealer regularly receives milk from producers or other milk dealers.

Payment, as used in reference to payment for milk, means payment in legal coin or currency of the United States, by United States postal money order, by cashier's check or similar instrument issued by a national bank, a member bank of the Federal Reserve System, or any bank or trust company authorized to conduct a commercial banking business within the Commonwealth or any contiguous state, or by commercial check drawn by the paying milk dealer upon any such national or member bank or other bank or trust company, against funds of the milk dealer collected and then on deposit to his credit, and dated not later than the date on which such check is delivered to the producer or the date on which such payment is due, whichever is the later; and no other check or bill of exchange, and no promissory note or other negotiable instrument, shall be deemed to constitute payment for milk received by a milk dealer unless and until such instrument, or any similar instrument given in renewal or substitution therefor, shall have been paid in a manner in this paragraph prescribed above.

Rating, for each producer, including each milk dealer who is also a producer, means the quantity of milk calculated by multiplying the number of days of the delivery period during which milk is delivered by each producer, by the base of such producer as determined pursuant to 331 CMR 7.03.

Secretary of Agriculture means the Secretary of Agriculture of the United States, or the War Food Administrator, or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers or to perform the duties of the Secretary of Agriculture of the United States.

Skimmed milk means milk containing not more than $\frac{1}{2}$ of 1% of butterfat.

Store means store as defined in M.G.L. c. 94A, § 1.

Transfer means the sale and delivery of milk by one milk dealer to another milk dealer, or the shipment of milk from one milk plant to another milk plant operated or used by the same or by a different milk dealer.

Wholesale means a sale by a milk dealer not eligible for exemption under M.G.L. c. 94A, § 4(b), to a store, hotel, restaurant, hospital, public or private institution, college, school or other purchaser in wholesale volume, but does not include any sale by a producer to a milk dealer or by one such milk dealer to another such milk dealer or intermediate milk dealer.

~~331 CMR: BUREAU OF MILK MARKETING~~

~~8.02: Application~~

~~(1) Milk Market Areas.~~ The terms, conditions and regulations set forth in this order shall apply to all milk dealers in any of the several markets of the Commonwealth, except that any term, condition or regulation herein set forth, which is inconsistent or in conflict with any term, condition or regulations in a federal milk marketing agreement, license, rule, regulation or order, regulating the handling of milk in any federal milk marketing area, shall not apply to such marketing area; but, subject to the foregoing, this official order shall be in effect throughout the Commonwealth, including every such market and area.

~~(2) Milk.~~ The terms, conditions and regulations set forth in this order shall, except as provided in 331 CMR 8.02(1), apply to the purchase or receipt without purchase by any milk dealer of all milk purchased or received by him within the Commonwealth from producers or other milk dealers.

~~8.03: Classification of Milk~~

~~(3) Use Classification.~~ Milk purchased or received by milk dealers shall be classified as follows:

~~(a) Class I milk means all milk the utilization of which is not established as Class II milk;~~

~~(b) Class II milk means all milk the utilization of which is recorded pursuant to 331 CMR 8.05(4), and established pursuant to 331 CMR 8.05(4),~~

~~1. as being sold, distributed, used or disposed of other than as or in milk, milk beverage or cultured milk; buttermilk, skimmed milk or cultured skimmed milk, for human consumption; milk used in the preparation of bakery products; or concentrated milk for fluid consumption;~~

~~or~~

~~2. as plant shrinkage not in excess of 2% of the volume handled;~~

~~(c) Class I milk, however, shall not be construed to include milk or skimmed milk the utilization of which is recorded and established as being used or disposed of in the separation of cream, or in the manufacture of butter, cheese, ice cream or ice cream mix, evaporated, condensed or concentrated milk when contained in hermetically sealed cans, powdered milk or powdered skimmed milk, or casein.~~

~~(4) Transfers.~~

~~(a) If milk (or skimmed milk) is transferred by a milk dealer in bulk, such milk (or skimmed milk) shall be accounted for by the transferring milk dealer as Class I and/or Class II milk as follows:~~

~~1. If the handling of milk at the milk plant to which such milk (or skimmed milk) is transferred, is fully regulated by a Federal Milk Marketing Order, such milk shall be classified as Class II milk.~~

~~2. If the handling of milk at such milk plant is regulated by this or any other milk marketing order, rule or regulation issued by a legally constituted authority of the United States or any other state, such milk may be classified as reported by the milk dealer to whose milk plant it was transferred, or if such milk dealer makes no report, as reported by the transferring milk dealer, to the extent that such classification of the milk does not constitute or entail violation of other terms, conditions and provisions of this or such other milk marketing order, rule or regulation.~~

~~3. If the handling of milk at such milk plant is not regulated by any milk marketing order, rule or regulation issued by a legally constituted Federal or state authority, such milk may be classified as reported by the milk dealer to whose milk plant the milk was transferred, or if such milk dealer makes no report, as reported by the transferring milk dealer; provided that no greater quantity thereof shall be classified as Class II milk than the total milk or skim milk which is utilized as Class II milk at such milk plant.~~

~~(b) The transfer from any milk plant of milk other than in bulk, shall be a Class I disposition of such milk.~~

~~(5) Proportional Use.~~ In establishing the classification of milk received at any milk plant during any delivery period, all milk received from producers shall be deemed to have been used as Class I and/or Class II milk in the same proportion, as such proportion may be ascertained and result from the provisions of 331 CMR 8.06(5) and 8.07(1).

8.03 continued

~~(6) Responsibility of Milk Dealers in Establishing the Classification of Milk. In establishing the classification of any milk received by a milk dealer from producers, the burden rests upon the milk dealer who receives the milk from producers to account for the milk and to prove the fact that such milk should not be classified as Class I milk. In the absence of true and adequate records manifesting other disposition, all milk received shall be presumed to have been used as Class I.~~

8.04: Minimum Prices

~~(1) Class I Price. Each milk dealer shall pay producers at the time and in a manner set forth in 331 CMR 8.08 per hundredweight of Class I milk purchased or received by him from producers,~~

~~(a) Which is sold or distributed (to persons other than milk dealers not eligible for exemption under M.G.L. c. 94A, § 4(b)), used or disposed of within the commonwealth by him or any other such milk dealer subsequently handling the same, not less than the minimum Class I price, f.o.b. the receiving milk dealer's milk plant, from time to time fixed by or determined pursuant to official order or orders of the Commission, or pursuant to an agreement, license, rule, regulation or order made or issued pursuant to federal law, for milk sold, distributed, used or disposed of as Class I milk in the market in which such milk was so sold, distributed, used or disposed of; and for such milk.~~

~~(b) Which is so sold or distributed (to persons other than milk dealers not eligible for exemption under M.G.L. c. 94A, § 4(b)), used or disposed of outside of the commonwealth, not less than the minimum Class I price f.o.b. the receiving milk dealer's milk plant, from time to time fixed by or determined pursuant to official order of the Commission, for milk sold, distributed, used or disposed of as Class I milk in the market in which is located the milk dealer's milk plant at which such milk was received from producers, adjusted, plus or minus as the case may be, by the difference between such minimum price and the price from time to time ascertained by the Director as the prevailing price paid by milk dealers for milk of equivalent use in the market or area in which such milk was so sold, distributed, used or disposed of.~~

~~(2) Sales in More than One Market. In event that milk received by any milk dealer from producers is sold or distributed (to persons other than milk dealers not eligible for exemption under M.G.L. c. 94A, § 4(b)), used or disposed of by him or any other such milk dealer subsequently handling the same as Class I milk in two or more markets or areas for which different Class I prices are applicable, such receiving milk dealer in computing the minimum payment to be made to producers for milk purchased or received by him at the milk plant at which such milk was received by him from producers, shall use a minimum Class I price not less than a blended Class I price calculated by:~~

~~(a) Multiplying the number of hundredweight of Class I milk so received by him at such milk plant and so sold, distributed, used or disposed of by him or such other milk dealer in each such market or area, by the minimum Class I price applicable pursuant to 331 CMR 8.04(1);~~

~~(b) Adding together the products obtained by such multiplication for all markets and areas in which Class I milk was so sold, distributed, used or disposed of by him or such other milk dealer; and~~

~~(c) Dividing the sum so obtained by the total number of hundredweight of such Class I milk.~~

~~(3) Class II Price.~~

~~(a) Each milk dealer who at a milk plant in any market (except in markets for which a different method of determining the Class II price is or may hereafter be provided by official order or orders of the Commission from time to time in force) receives from producers milk which is sold, distributed, used or disposed of by him as Class II milk, shall account and pay to producers therefor, at the time and in the manner set forth in 331 CMR 8.08, not less than the following price per hundredweight f.o.b. the milk dealer's plant:~~

~~(b) The Class II price per hundred weight of milk in state regulated market areas shall be the same price as the Class II price announced from time to time the Federal Market Administrator pursuant to Federal Milk Order No. 1.~~

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~~(4) Notification of Class II Prices. On or before the fifth day after the end of each delivery period, the Director shall mail to each milk dealer who on his latest application for license states that he was purchasing milk from producers on the composite or on a base rating plan, and to each milk dealer who has subsequently been authorized pursuant to 331 CMR 8.06(4), to begin purchasing milk either on the composite or on a base rating plan, a notice stating the Class II price computed pursuant to 331 CMR 8.06(4), for such delivery period applicable to each milk plant operated by him within the markets to which this order applies pursuant to 331 CMR 8.02. Failure to send or receive such notice, however, shall not affect any obligation of a milk dealer arising under this order.~~

~~(5) Location Differential. If any milk dealer takes title to milk, purchased or received by him from producers, at any point other than at a milk plant owned, operated or employed by him, the f.o.b. milk plant Class I and Class II prices applicable pursuant to previous sections of this article, may be reduced by subtracting as a location price differential an amount not greater than the reasonable cost of transportation from such point to such milk plant as set forth in an agreement signed by all parties concerned as to such reasonable cost; provided, that such agreement shall have been previously filed by the milk dealer with the Director and approved by the Director as setting forth an amount not greater than the reasonable cost of such transportation.~~

8.05: Reports

~~(1) Reports as to Producers. After any petition filed pursuant to 331 CMR 8.06(4) by a milk dealer or by producers delivering to a milk dealer, making application for a change of marketing plan to a base rating plan, the Director may require that the milk dealer shall report to the Director, on forms approved by the Commission and furnished by the Director, within ten days after the Director's request, with respect to any producer or group of producers, and with respect to any period or periods of time during the calendar year in which the request is made and the immediately preceding calendar year, designated by the Director, the following information: name and address of each producer, total pounds (or quarts) of milk received from each producer, the number of days in which deliveries were made by each producer and the total delivery of milk by all such producers within such period or periods; provided, that nothing in 331 CMR 8.05 shall be construed to qualify or limit any requirement of 331 CMR 8.07.~~

~~(2) Daily Statement to Producers. On each day, each milk dealer shall furnish to each producer from whom he purchases or receives milk, a written statement of the quantity in quarts or pounds of milk received by said milk dealer from such producer during the preceding day.~~

~~(3) Delivery Period Statement to Producers. Each milk dealer on or before the time for final payment specified in 331 CMR 8.08(1), shall furnish to each producer from whom he has received milk an understandable written or printed statement in such form that it may be retained by the producer, which shall show:~~

- ~~(a) The delivery period and the identity of the milk dealer and of the producer;~~
- ~~(b) The applicable minimum flat or blended Class I price, the applicable Class II price, if any, and if the milk dealer is buying on butterfat test basis, the butterfat differential;~~
- ~~(c) The total pounds (or quarts) of milk received by the milk dealer from the producer, and, if the milk dealer is buying milk on a butterfat test basis, the average butterfat test of such milk;~~
- ~~(d) Such total quantity of milk received by any milk dealer from a milk producer having a farm bulk milk tank, shall include any number of pounds of milk which such milk dealer, his agent, or other person authorized by him, shall have caused to be transferred from such farm bulk milk tank into a milk tank truck, regardless of whether or not the same quantity of milk is actually received at the milk dealer's plant.~~
- ~~(e) If the milk dealer is purchasing milk on the composite or on a base rating plan, the minimum composite price, or base and excess prices, under the provisions of 331 CMR 8.08 required to be paid to the producer.~~

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- (f) ~~The rate or price which is used in making the payment, if such rate or price is other than an applicable minimum flat or blended Class I price, composite price, or the base and excess prices, set forth in such statement pursuant to 331 CMR 8.05(3)(b) and 8.08(3)(e).~~
 - (g) ~~The amount, or the rate per hundred weight (or quart), of each deduction claimed by the milk dealer, together with a description of the respective deductions; and~~
 - (h) ~~The net amount of payment to the producer.~~
- (4) ~~Records and Verification of Reports.~~ Each milk dealer shall within the Commonwealth keep true books and records accurately and completely reflecting and summarizing the transactions of his milk business conducted by him at or from a milk plant or other place within the Commonwealth, in such manner and detail as will enable the Director to ascertain and determine the extent to which such milk dealer has complied with the Act and the orders, rules and regulations made by the Commission thereunder.

8.06: Milk Marketing Plans

- (1) ~~Flat Price Plan.~~ Except as provided in 331 CMR 8.06(2) and 8.06(3), each milk dealer shall, in the manner provided in 331 CMR 8.08(2)(a) and in 331 CMR 8.08(2)(e) pay for all milk purchased or received by him from producers, not less than the Class I price or prices applicable pursuant to 331 CMR 8.04(1), 8.04(2), and 8.04(5).
- (2) ~~Composite Price Plan.~~
- (a) ~~Each milk dealer who on the effective date of this order, or thereafter pursuant to 331 CMR 8.06(4), purchases or receives milk from producers on a composite price plan, shall account and pay for milk purchased or received by him from producers on the following marketing plan:~~
 - (b) ~~For each delivery period the milk received by such milk dealer (including milk of his own production which is pasteurized, bottled or otherwise packaged for sale, otherwise processed or otherwise handled by him in a milk plant operated or employed by him) shall be classified according to use as provided in Article III, the value thereof computed as provided in 331 CMR 8.07(1), and the composite price to be paid to producers therefor determined as provided in 331 CMR 8.07(2)(a).~~
- (3) ~~Base Rating Plan.~~ Each milk dealer who on the effective date of this order, or thereafter pursuant to 331 CMR 8.06(4), purchases or receives milk from producers on a base rating plan, shall account and pay for all milk purchased or received from producers, on a milk marketing plan which shall provide that: For each delivery period all milk received by such milk dealer (including milk of his own production to the extent set forth in 331 CMR 8.06(2)(b) shall be classified according to use as provided in 331 CMR 8.03, the value thereof computed as provided in 331 CMR 8.07(1), and the base and excess prices to be paid to producers therefor determined as provided in 331 CMR 8.07(2)(b).
- (4) ~~Change of Marketing Plan.~~ No milk dealer who, by his last application for milk dealer license and license issued thereon, or by a subsequent application for change of marketing plan and permission granted by the Director thereon (if any such permission has been so granted), is on the effective date of this order authorized to purchase milk from producers only on a flat price plan, shall thereafter purchase or receive milk from producers only on any marketing plan other than the flat price plan set forth in 331 CMR 8.06(1); and no milk dealer who on the effective date of this order is so authorized to purchase milk on a composite price plan, shall thereafter purchase or receive milk from producers on any milk marketing plan other than on the composite price plan set forth in 331 CMR 8.06(2); and no milk dealer who on the effective date of this order is so authorized to purchase milk on a base rating plan, shall thereafter purchase or receive milk from producers on any marketing plan other than a base rating plan conforming to the provisions of 331 CMR 8.06(3);
- (a) ~~Unless and until written application to make a change of marketing plan shall have been filed with the Director by the milk dealer, or by a majority of the producers from whom the milk dealer purchased or received milk during the delivery period next preceding but one that during which such application is filed, or by producers from whom the milk dealer during said delivery period purchased or received more than 50% of the~~

8.06 continued

total quantity of milk purchased or received by him from producers (including milk of his own production to the extent set forth in 331 CMR 8.06(2)(a); and

(b) Unless and until the milk dealer (in case such application is filed by him) shall have introduced in his methods of keeping his books and records all changes necessitated by the proposed change of marketing plan;

(c) Unless and until the milk dealer shall have received from the Director or the Commission written approval of the proposed change in marketing plan; and

(d) Unless and until the milk dealer (in case the application for change is filed by him) shall have notified all producers in writing at least 14 days in advance of such change.

(5) Utilization.

(a) Each milk dealer who purchases or receives milk from producers either on the composite price plan or on a base rating plan, shall utilize the milk received by him from producers (including, pro rata, milk of his own production to the extent set forth in paragraph 331 CMR 8.06(2)(a) as Class I milk, to the fullest possible extent available in the operations conducted by such milk dealer at or from the milk plant at which such milk was received from producers.

(b) The provisions of 331 CMR 8.06(5)(a) shall not apply to any milk purchased under the circumstances set forth in 331 CMR 8.10(5).

8.07: Determination of Prices to Producers

(1) Computation of Value of Milk for Each Dealer.

(a) For each delivery period there shall be computed, the value of the milk sold, distributed, used or disposed of by each milk dealer which was received by him from producers (including therein milk of his own production to the extent specified in 331 CMR 8.06(2)(a)) by:

1. multiplying the quantity of such milk in each class by the class price applicable pursuant to 331 CMR 8.04(1), 8.04(2), 8.04(3), and 8.04(5); and
2. adding together the resulting values of all classes;

(b) For the purposes of 331 CMR 8.07, compliance with the provisions of 331 CMR 8.06(5) shall be presumed.

(2) Computation of Prices. The price per hundredweight of milk delivered during each delivery period shall be computed in the following manner:

(a) Composite Price Plan. Divide the total value of all milk received by the milk dealer from producers as computed pursuant to 331 CMR 8.07(1), by the total quantity of such milk. The result is the composite price which such milk dealer shall pay to each producer at the time and in the manner set forth in 331 CMR 8.08 for all milk purchased or received by such milk dealer from such producer during such delivery period;

(b) Base Rating Plan.

1. In the event that the Class I milk of such milk dealer, as included in the computation made pursuant to 331 CMR 8.07(1), is less than the total quantity of milk received from producers within and not in excess of their individual bases, as included in said computation, subtract from the total value computed pursuant to 331 CMR 8.07(1), the value of all milk received from producers in excess of their individual bases, as included in said computation, at the Class II price, and divide the amount remaining by said total quantity of milk received from producers within and not in excess of their individual bases. The result is the composite base price and the Class II price is the excess price to be paid by the milk dealer for base milk and excess milk respectively, as set forth in 331 CMR 8.08; or

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2.—In the event that the Class I milk of such milk dealer exceeds said total quantity of milk received from producers within and not in excess of their individual bases, subtract from the total value computed for such milk dealer pursuant to 331 CMR 8.07(1), the value of said total quantity of milk received from producers within and not in excess of their individual bases at the Class I price, and divide the amount remaining by said total quantity of milk received by such milk dealer from producers in excess of their individual bases. The result is the composite excess price and the Class I price is the base price to be paid by the milk dealer for excess milk and base milk respectively, as set forth in 331 CMR 8.08.

(3) ~~Base Determination.~~

(1) ~~Bases in effect on June 1, 1945, shall be used through December 31, 1945.~~

(2) ~~Effective January 1, 1946, bases of all producers who deliver milk to a milk dealer purchasing on a base rating plan shall be determined in accordance with a base rating plan, which has been adopted by a base committee chosen by a meeting of such producers from their own number, and filed with and approved by the Director. In no case shall arbitrary figures be allocated to one or more producers without the application of the same mathematical formula to each producer's average delivery per day during a selected base period.~~

8.08: Payments for Milk

(1) ~~Time and Method of Payment.~~ Each milk dealer shall make payments to producers, subject to the butterfat differential set forth in 331 CMR 8.08(3) if such dealer is receiving milk on the basis of test for butterfat content, for the value of all milk received from producers during each delivery period and included in the computation made pursuant to 331 CMR 8.07(1), at the time and in the manner following:

(2) ~~Time of Payment.~~

(a) ~~Daily Payment.~~ Except as provided in 331 CMR 8.08(2)(b)1., each milk dealer other than a milk dealer who has filed with the Commissioner of Agriculture pursuant to M.G.L. c. 94A, § 42A, a bond or other security satisfactory to the Commissioner of Agriculture in amount determined by him as provided in M.G.L. c. 94A, § 42B to be sufficient to cover such milk dealer's current receipts of milk from Massachusetts producers on a weekly, semi monthly or monthly payment basis, shall each day make final payment for the total value of milk received by him from producers on that day.

(b) ~~Advance Payment.~~

1. ~~Producer Dealers Who are Exempt from Filing Bond.~~ Any producer dealer who has been relieved from the filing of bond or other security under said M.G.L. § 42A, by an order of the Commissioner of Agriculture filed in the Department of Agriculture pursuant to M.G.L. c. 94A, § 42E, shall make payment to producers for the payment period and at the time or times specified in such producer dealer's application to the Commissioner of Agriculture for license under M.G.L. c. 94A, § 42A, or in such order of the Commissioner (if the terms thereof in either respect differ from those specified in such application).

2. ~~Weekly Payment Period.~~ Each milk dealer who has filed with the Commissioner of Agriculture pursuant to M.G.L. c. 94A, § 42A, a bond or other security satisfactory to the Commissioner of Agriculture in amount determined by him as provided in M.G.L. c. 94A, § 42B to be sufficient to cover such milk dealer's current receipts of milk from Massachusetts producers on a weekly payment basis, shall on or before the tenth day after the close of each calendar week or other seven day payment period specified in his application for license under said M.G.L. c. 94A, § 42A, make an advance payment to producers of the approximate value of milk received during such calendar week or other specified seven day period; but in no event shall such advance payment be less than 90% of the calculated actual value for such period, using the weekly Class II prices announced by the Director for such period in determining the value of any Class II milk; and

8.08: continued

~~3. Semi-Monthly Payment Period. Each other milk dealer (except as provided below) shall on or before the first day of each delivery period make an advance payment to producers of the approximate value of milk received during the first 15 days of the immediately preceding period; but in no event shall such advance payment be less than 90% of the calculated actual value for such period using the semi-monthly Class II price announced by the Director for such period in determining the value of any Class II milk; provided, however, that no such advance payment shall be required to be made by any milk dealer who has filed with the Commissioner of Agriculture pursuant to said M.G.L. c. 94A, § 42A a bond or other security satisfactory to the Commissioner of Agriculture in amount determined by him as provided in M.G.L. c. 94A, § 42B to be sufficient to cover such milk dealer's current receipts of milk from Massachusetts producers on a monthly payment basis.~~

~~(e) Final Payment. On or before the 20th day after the end of each delivery period, each milk dealer (except milk dealers required to make earlier final payment pursuant to 331 CMR 8.08(2)(a)) shall make payment for the total value of milk received by him from producers during such delivery period as provided in 331 CMR 8.08(3).~~

~~(3) Method of Payment.~~

~~(a) Flat Price Plan. At the applicable Class I price, or if milk is sold or disposed of in more than one area for which the Class I prices are not all the same, at a blended Class I price calculated pursuant to 331 CMR 8.04(2) and 8.06(1), for all milk received by such milk dealer from producers.~~

~~(b) Composite Price Plan. At the composite price calculated pursuant to 331 CMR 8.07(2)(a), for all milk received from producers by such milk dealer.~~

~~(c) Rating Plan.~~

~~1. Base Milk. At the Class I price or at the composite price for base milk as calculated pursuant to 331 CMR 8.07(2)(b)1., for that quantity of milk as received from each producer not in excess of the base of such producer.~~

~~2. Excess Milk. At the Class II price, or at the composite price for excess milk, as calculated pursuant to 331 CMR 8.07(2)(b)2., for that quantity of milk received from each producer in excess of his base.~~

~~(4) Correction of Producer Payment Errors. In case payments at less than the applicable minimum prices established by order of the Commission have been made by a milk dealer to his producers for any reason, such errors shall be corrected when payments are due for the next delivery period following notification by the Director of such underpayment. The obligation of each dealer to make payment to producers on the applicable due date as provided in 331 CMR 8.08(2), shall not be modified or postponed by the provisions of 331 CMR 8.08 or by failure of the Director to give or the dealer to receive such notification.~~

~~(5) Butterfat Test and Differential. The butterweight differential in state regulated market areas shall be the same as that set by the Federal Market Administrator pursuant to Federal Milk Order No. 1.~~

~~(6) Additional Payments. Any milk dealer may make payments to producers in addition to the payments computed in accordance with the provisions of this order.~~

~~(7) Allowable Deductions from Payments to Producers. Each milk dealer in making payments to his producers for milk, may make deductions only as follows:~~

~~(a) When the service of transportation of milk from the producer's farm to the milk dealer's platform is not performed by the producer, the milk dealer shall be allowed to deduct for transportation of the producer's milk the reasonable cost of such service;~~

~~1. Provided, however, that an agreement signed by all parties concerned setting forth the understanding of all parties at interest as to such reasonable cost shall have previously been filed by the milk dealer with the Director and approved by the Director; no such deduction, however, shall be made from any price which has been reduced by subtraction of a location differential pursuant to 331 CMR 8.04(5); and~~

~~8.08: continued~~

~~2. Provided further, that if the service of transportation is performed by some one other than either the producer or the milk dealer, the milk dealer shall pay over all amounts so deducted to the person performing such service on or before the date on which final payment for the milk is due pursuant to 331 CMR 8.08(2)(b).~~

~~(b) When the service of transportation of milk from the producer's farm to the milk dealer's platform is not performed by the producer, the milk dealer may deduct the amount of any Federal transportation tax paid by the milk dealer on account of such transportation, except where title to the milk passed from the producer to some other person at or before the time when such transportation began.~~

~~(c) When the milk dealer supplies to the producer containers for transportation of milk from the farm to the milk dealer's plant, the milk dealer may deduct ¾¢ per hundred weight as rental for such containers.~~

~~(d) When and to the extent authorized by M.G.L. c. 94A, § 9(b), or corresponding provisions of any succeeding legislation, each milk dealer may deduct not to exceed ½ of any payment made by him to the Commission on or before the 25 day of the month in which such payment is due, on account of milk received from the producer and distributed in the highest use classification.~~

~~(e) Each milk dealer may deduct from the payments to be made to producers who are members of a producer's cooperative milk marketing association, and pay to such association, such fees, assessments or dues as may be authorized by such producers. If the milk dealer in making payments to producers has deducted any such fees, assessments or dues, the milk dealer shall pay to such association all amounts so deducted on or before the tenth day of the month following that in which such final payment to producers was made.~~

~~(f) The milk dealer may deduct on account of overpayments made by him to the producer for milk delivered in any payment period prior to the period from the payment for which the deduction is made, if the Director shall find that such overpayment was made through clerical, mathematical or mechanical error; and the Director shall have approved the time and amount of each such deduction.~~

~~(g) Each milk dealer may deduct any other amount authorized by the producer in writing, provided, that deduction of such amount will not directly or indirectly have the effect of rebating to the milk dealer any portion of the minimum price otherwise payable by the milk dealer to the producer under the provisions of the Act and of any order or orders of the Commission issued thereunder; and provided, further, that such written authorization is kept on file for inspection at the milk dealer's place of business in the Commonwealth.~~

~~(h) Interplant Transportation Deduction. In addition to all other deductions allowable under orders of the Commission, each milk dealer who receives milk from producers in a milk plant to which this order applies, may in making payments to producers for such milk, deduct from the minimum payment under this and/or any other applicable order or orders of the Commission required to be paid by him to producers for such milk, the reasonable cost of transporting such milk in bulk from such milk plant to another milk plant located in any market or milk marketing area within or outside of the Commonwealth, under the circumstances and upon the terms and conditions following:~~

~~1. If Class I utilization is not available for such milk at the milk plant at which it was received from producers but is available for such milk at the milk plant to which it is so transported; or~~

~~2. If neither Class I nor Class II utilization is available for such milk at the milk plant at which it was received from producers, but a Class II utilization is available for such milk at the milk plant to which it is so transported; and~~

~~3. If the milk transported leaves the milk plant at which it was received from producers during the months of April, May and June; or the transferring milk dealer shall have given to the Director within 48 hours after shipment written notice of the plant of origin, plant of destination and quantity of milk transferred by each such shipment; and~~

~~4. If the amount of such deduction does not exceed either the actual cost of such transportation, or the lowest applicable rail or trucking rate filed or published in accordance with requirement of law, and shall have been approved by the Director as reasonable, then~~

~~8.08: continued~~

~~5. The milk dealer who received such milk from producers may make deduction calculated in 331 CMR 8.08(7)(i).~~

~~(i) Calculation of Maximum Deduction Per Hundredweight.~~

- ~~1. From the number of hundredweight of milk so transported during the payment period, subtract the number of hundredweight of milk, if any, received by the milk dealer, at the milk plant from which milk was so transported, from sources other than producers;~~
- ~~2. Multiply such reasonable cost of transportation per hundredweight by the remainder obtained in 331 CMR 8.08(7)(i)1.; and~~
- ~~3. Divide the product obtained in 331 CMR 8.08(7)(i)2. by the total number of hundredweight of milk received at such milk plant from producers (including dealer's own production, if any).~~
- ~~4. The quotient so obtained is the maximum deduction per hundredweight which may be taken pursuant to 331 CMR 8.08(7)(h).~~

~~(8) Deductions from Checks.~~

~~(a) If the Director receives written request or requests from a substantial number of producers acting either individually or through a cooperative or other incorporated association of milk producers recommending that deductions be made from checks of producers who deliver milk to milk dealers who distribute milk in a particular milk marketing area, for payment to the American Dairy Association of Massachusetts or a local affiliated unit of the National Dairy Council, the Director shall make such examination and investigation as in his judgment circumstances warrant or require.~~

~~(b) If after such examination and investigation the Director finds:~~

- ~~1. That all such requests set forth the same proposed rate of deduction;~~
- ~~2. That none is contingent in any way on any payment being made by a milk dealer;~~
- ~~3. That such request is made by or on behalf of a substantial number of the producers (acting either individually or through a cooperative or other incorporated association of milk producers) who are delivering milk to milk dealers who are distributing milk in said marketing area;~~
- ~~4. That substantial producer opposition to such request does not exist; and~~
- ~~5. That there is reason to believe that such deduction and payment at the proposed rate will promote advertising and publicity or research and educational programs designed to increase the consumption of milk (as defined in M.G.L. c. 94A, § 1);~~

~~Then the Director shall forthwith in writing so notify each producer (individually or through his association) who is then known to be delivering milk to a milk dealer who is distributing milk in such milk marketing areas, and each milk dealer.~~

~~(c) Upon receipt of such notification any such milk dealer may mail to each producer who is delivering milk to such milk dealer a letter advising the producer:~~

- ~~1. That the milk dealer, desiring to cooperate with the American Dairy Association of Massachusetts (or a local affiliated unit of the National Dairy Council, as the case may be) will, beginning with the first day of a specified calendar month (not less, however than three weeks after the mailing of such letter), make deductions at the rate specified in such request, and pay the amount thereof over to the American Dairy Association of Massachusetts (or to a local affiliated unit of the National Dairy Council, as the case may be); and~~
- ~~2. That the arrangement is purely voluntary and that no deduction will be made from any producer's payment for any period for which such producer has, by writing received by the milk dealer on or before the first day of the month in which such payment is due, requested that such deduction be not made.~~

~~(d) After the expiration of said period of not less than three weeks after the mailing of such letter, such milk dealer may accordingly make such deductions from producers and payments to the American Dairy Association of Massachusetts (or to a local affiliated unit of the National Dairy Council, as the case may be), provided, however:~~

- ~~1. That all amounts deducted pursuant to this subsection are paid by such milk dealer to the American Dairy Association of Massachusetts (or to a local affiliated unit of the National Dairy Council, as the case may be) on or before the tenth day of the month immediately following the month in which final payment is required by order of the Commission to be made to the producer;~~

8.08 continued

~~2. That such milk dealer shall annually at least advise each producer by letter that such deductions are voluntary and that no deduction will be made from any producer's payment for any period for which the producer by writing received by the milk dealer on or before the first day of the month in which payment is required to be made to the producer, requests such deduction be not made; and~~

~~3. That such milk dealer shall keep on file all written communications received from producers requesting that such deductions be not made, and also a copy of each notice mailed by the milk dealer to any producer pursuant to provisions of 331 CMR 8.08(8)(c) or 8.08(8)(d).~~

~~(e) Nothing in this division shall be construed under any circumstances to impose on any milk dealer any obligation to make such deductions.~~

~~(f) Each milk dealer may deduct any other amounts which he may be from time to time required by law to deduct from such payment to the producer for milk.~~

~~(9) Goods, Services and Credit Period.~~

~~(a) Goods and Services. Except as and to the extent provided in 331 CMR 8.08(7) and 8.08(8), no obligation of a milk dealer arising under this order on account of the purchase or receipt of milk by him from a producer shall be discharged in whole or in part by payment in goods or services.~~

~~(b) Extension of Credit Period Not Permitted. No milk dealer shall use any device, or tender or deliver to any producer as payment in whole or in part for milk purchased or received by the milk dealer from a producer any check, bill of exchange, promissory note or other instrument, which will operate to extend the period of credit permitted to the milk dealer pursuant to 331 CMR 8.08(2) beyond the applicable time for payment fixed in said subsection, except, in the case of commercial checks drawn on banks or trust companies authorized to do a commercial banking business in the Commonwealth or any contiguous state by the period required for clearance of such checks in the market in which is located the milk plant at which such milk was received from the producer.~~

~~8.09: Milk Purchased or Received from Other Milk Dealers~~

~~(1) Purchases of Raw Milk in Bulk from Certain Producer Dealers. Each milk dealer who regularly purchases or receives from another milk dealer milk of the latter's own production, in bulk, shall account and pay for such milk at not less than the minimum Class I and/or Class II prices determined pursuant to 331 CMR 8.04, in accordance with a buying plan provided in 331 CMR 8.06, and at the time and in the manner set forth in 331 CMR 8.08; and for the purpose of such transaction shall treat such milk dealer who is also a producer, in all respects as though he were a producer.~~

~~(2) Purchases of Milk from Other Milk Dealers. Except as provided in 331 CMR 8.09(1), no milk dealer shall sell or deliver to or purchase or receive from any other milk dealer Class I milk at less than the applicable minimum Class I price set forth in 331 CMR 8.04 adjusted by the butterfat differential provided in 331 CMR 8.08(5), or established by applicable order of the Secretary of Agriculture.~~

~~(3) Time of Payment. Except as provided in 331 CMR 8.09(1), each milk dealer who purchases or receives milk from another milk dealer shall, for any such Class I milk, make payment of at least the minimum amount determined pursuant to 331 CMR 8.09(2) and for any such Class II milk the agreed purchase price thereof, within 30 days following his receipt of the milk.~~

~~8.10: Producers~~

~~(4) Notice Required. Each milk dealer before receiving at any milk plant milk from any producer who did not deliver milk to such milk plant during the 15 day period immediately prior to the effective date of this order, shall give to the Director a notice in writing, specifying the name and address of such producer, the name of any milk dealer and address~~

~~8.10: continued~~

~~of any milk plant to whom and which such producer is then or was last delivering milk, and the approximate quantity of milk expected to be received from such producer daily. Such notice shall be delivered at the office of the director (or mailed so as to bear postmark) not later than the first day on which milk is received from such producer.~~

~~(5) Milk Not to Be Received When. No milk dealer shall receive milk from any producer in violation of any applicable law, or of any order, rule or regulation having the force and effect of law.~~

~~(6) Purchase of Class II Milk. Except under the provisions of 331 CMR 8.10(4), no milk dealer shall purchase or receive from any producer milk of his own production for sale, distribution, use or disposition as Class II milk otherwise than in accordance with a buying plan authorized by 331 CMR 8.06(2), 8.06(3) or 8.06(4).~~

~~(7) Emergency Permits.~~

~~(a) When Issued. Notwithstanding the provisions of 331 CMR 8.10(3), the Director, upon application by a licensed milk dealer, may issue an emergency permit as provided in 331 CMR 8.10(4)(b), if he finds that such action is necessary in order to prevent or alleviate undue hardship; that the conditions inducing the need for such permit are temporary, and that such action is just and equitable as among all parties affected.~~

~~(b) Terms. Such an emergency permit shall be in writing and shall authorize the milk dealer to purchase or receive milk from the producer at the milk plant designated:~~

~~1. For such period, not to exceed six months, as the Director believes the conditions necessitating such permit will continue, and~~

~~2. For Class I and/or Class II use at the applicable Class I and/or Class II price or prices in such proportion as the Director may find is just and equitable as among all parties affected; provided, that no greater proportion of the milk received under any such permit be used or paid for as Class I milk than is so used and paid for by the milk dealer of milk of the same grade received by the milk dealer at such milk plant from any regular producer.~~

~~(c) Renewal. A permit issued under 331 CMR 8.10 may, upon its expiration, be renewed by the Director for a period not exceeding six months, if he finds that the conditions inducing the need thereof continue to exist.~~

~~(d) Payment. The amount payable to a producer on account of milk received from him under such an emergency permit by a milk dealer at a milk plant at which the milk dealer is purchasing or receiving milk on the composite price plan, or on a base rating plan, shall be computed at the applicable Class I and/or Class II prices in the proportion of use specified in such permit (subject to 331 CMR 8.10(4)(b)2), shall be paid at the time set forth in 331 CMR 8.08(2), and shall be excluded from the total value of all milk received by such milk dealer from producers at such milk plant as computed pursuant to 331 CMR 8.08(1). In computing the composite price or base and excess prices for other milk received by the milk dealer from producers at such milk plant, the remainder of such value of all milk received by the milk dealer from producers at such milk plant, remaining after such exclusion, shall be used at the total value of all milk received by the milk dealer from producers at such milk plant for all purposes of 331 CMR 8.07(2).~~

~~(8) Unauthorized Receipts of Milk.~~

~~(a) If any milk dealer purchases or receives from any person milk of such person's own production otherwise than in compliance with the provisions of 331 CMR 8.10(2), such person shall not be deemed a "producer" as that word is used in or for the purposes of 331 CMR 8.10, or of 331 CMR 8.06(5), 8.07, and 8.08.~~

~~(b) In making payment to producers,~~

~~1. Such milk dealer, if he is at any milk plant receiving milk from producers on the flat price plan under circumstances which require the use of a blended Class I price, as provided in 331 CMR 8.04(2), shall pay to producers a minimum blended Class I price computed by allocating to milk received from producers, first, his Class I disposals of milk at or from such milk plant in the highest priced market or area, and thereafter, such Class I disposals in the next highest priced area, and so forth, until Class I disposals equal to the total volume of milk received by him from producers have been so allocated, or until all actual Class I disposals made by the milk dealer~~

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~~8.10 continued~~

~~at or from such milk plant have been so allocated; and~~

~~2. If such milk dealer is at any milk plant receiving milk from producers on the composite price plan or on a base rating plan, no milk received by him at such milk plant from persons described in 331 CMR 8.10(5)(a) shall be included in the total quantity of milk received from producers for the purposes of computing the value of and composite price or base and excess prices for milk received by such milk dealer from producers at such milk plant, as provided in 331 CMR 8.07.~~

~~(9) Discontinuance.~~

~~(a) No milk dealer shall refuse to accept or refuse to pay for milk delivered or tendered to him by or on behalf of a producer in ordinary continuance of a previous course of dealing, without~~

~~1. giving reasonable notice in writing to the producer and the Director, and~~

~~2. giving to the Director a written notice or statement of the cause for such refusal, except where such course of dealing is terminated in accordance with an express contract existing between the milk dealer and such producer with respect to the time and method of termination.~~

~~(b) Reasonable notice for the purpose of 331 CMR 8.10(6)(a)1. and 8.10(6)(a)2. shall be deemed to be a notice delivered, or mailed so as to be postmarked, 14 days at least before the day of such refusal, except in those instances in which acceptance of the milk so delivered or tendered would be or entail a violation of law, or of an ordinance, rule or regulation having the force and effect of law, in which case reasonable notice shall be deemed to be notice delivered or mailed so as to be postmarked, not later than the day on which the producer's milk was so refused.~~

~~8.11: Transactions with Violators~~

~~No milk dealer shall purchase, receive, process, sell, distribute or otherwise handle any milk which he has reason to believe has been acquired or handled in violation of any provisions of this order.~~

~~8.12: Prior Contracts~~

~~Any contract or agreement entered into by a milk dealer prior to the effective date of this order covering the purchase, delivery and/or sale of milk and its products, shall be deemed to be superseded by the terms and conditions of this order so far as inconsistent herewith.~~

~~8.13: Subsidies and Unreported Prices~~

~~Whenever the provisions of this order or any other order of the Milk Control Commission heretofore or hereafter issued, require the use of a specific price, index or wage rate for the purpose of determining class prices or for any other purpose, there shall be added to the specified factor, the amount of any subsidy, or other similar payment, being made by any Federal Agency in connection with the product or service associated with the factor specified: if, however, for any reason the factor specified is not reported or published as indicated, there shall be used the applicable maximum uniform price or rate, if any, established by regulations of any Federal department or agency plus the amount of any such subsidy or other similar payment; and if the specified factor is not reported or published and there is no applicable maximum uniform price, or if the specified factor is not reported or published, there shall be used a price, index or rate determined by the Secretary of Agriculture to be equivalent to or comparable with the factor specified, or in the event that no price, index or rate is so determined by the Secretary of Agriculture to be equivalent to or comparable with the factor specified, a price, index or rate determined by the Director to be equivalent thereto or comparable therewith.~~

8.14: ~~Administrative Procedure and Review~~

~~(1) Applications for Approval by Director. Any application for approval or other action by the Director under the terms of this order, may be granted or denied by him after such examination and investigation as in his opinion circumstances warrant or require, with or without a preliminary administrative hearing.~~

~~(2) Denial by Director. No such application for approval or other action shall be denied by the Director except for cause specified in writing delivered or mailed to the applicant.~~

~~(3) Petition for Review by the Commission. Any person aggrieved by any action or decision of the Director, or by any failure of the Director to act, under this or any other order of the Commission, may by writing filed with the Commission within seven days (Sundays and Holidays excluded) after the mailing or delivery to him by the Director of notice of his action or decision, or within a reasonable time after his failure to act, petition the Commission for a review thereof, pursuant to M.G.L. c. 94A, § 3. The filing of such petition shall stay any such decision or action of the Director. Within 15 days after the filing of such petition, the Commission shall in a manner provided by M.G.L. c. 94A, afford to the petitioner and the Director an opportunity to be heard and to present evidence relative to the subject matter of such petition.~~

8.15: ~~Volume and Weights of Containers~~

~~For the purposes of the calculation in this order, the following volume and weights shall be used:~~

~~(a) The weight of one quart of milk shall be taken as 2 15/100 (2.15) pounds.~~

~~(b) 100 pounds of milk shall be deemed to be equivalent to 46½ quarts of milk.~~

~~(c) The milk contained in a 40 quart can filled to the neck shall be deemed to weigh 85 pounds.~~

~~(d) The milk contained in a 20 quart can filled to the neck shall be deemed to weigh 42½ pounds.~~

~~(e) The cream contained in a 40 quart can of 40% butterfat content, filled to the neck, shall be deemed to weigh 82½ pounds and shall be deemed to contain 33 pounds of butterfat.~~

8.16: ~~Construction~~

~~(1) Saving Clause. This order and the rescission herein of any previously existing order shall not affect any act or thing done or begun, liability incurred, or any right accrued or established or any penalty incurred or any such prosecution or proceeding, civil or criminal, pending or instituted under or on account of any such previous order herein rescinded in whole or in part, to enforce any right or penalty or to punish any offense under the authority of any such previously existing order, at the time this order takes effect, but as to all such acts, things, liabilities, rights, penalties, prosecutions or proceedings any such previously existing order shall remain in full force and effect.~~

~~(2) Separability. It is the intention of the Commission that if any provision of this order, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this order, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.~~

~~(3) Maximum Prices. Nothing contained in this order shall be construed as requiring or authorizing the violation of any order, rule or regulation lawfully issued by the Office of Price Administration.~~

REGULATORY AUTHORITY

~~331 CMR 8.00: M.G.L. c. 94A.~~

~~NON-TEXT PAGE~~